IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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I.T.A. No.326 of 2004
Date of Decision:7.11.2006

Commissioner of Income Tax-I, Ludhiana
.....Appellant

Vs.

M/s Varinder Agro Chemicals Ltd., Ludhiana
.....Respondent

CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Shri S.K.Garg Narwana, Advocate for the appellant.

Ms. Radhika Suri, Advocate for the respondent.

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ADARSH KUMAR GOEL, J.

The following question of law has been referred for opinion of this Court arising out of order passed by the Income Tax Appellate Tribunal, Chandigarh Bench `A', Chandigarh (for short, `the Tribunal') in I.T.A. No.19/Chandi/97 dated 26.5.2004 in respect of the assessment year 1992-93:-

i) Whether on the facts and circumstances of the case, the Hon'ble Income tax Appellate Tribunal was justified in law in deleting the disallowance of Rs.7,73,518/- made on account of interest on interest free advances given to sister concern for non-business purposes?

ii) Whether on the facts and circumstances of the case, the Hon'ble Income tax Appellate Tribunal was justified in deleting the disallowance of Rs.7,19,154/- made on account of disallowance out of festival expenses incurred by the assessee?

iii) Whether on the facts and circumstances of the case, the Hon'ble Income tax Appellate Tribunal was justified in

law in deleting the additions made by the Assessing Officer of subsidy income on accrual basis?

iv) Whether on the facts and circumstances of the case, the Hon'ble Income tax Appellate Tribunal was justified in law in deleting the additions made by the Assessing Officer on account of valuation of closing stock?"

The assessee is producing fertiliser and is getting subsidy from the Central Government on the sale of its fertiliser. Claim for the said subsidy is made on despatch of the goods but the subsidy is payable only on sale. The assessee has valued its closing stock at the realisable value without adding the cost of subsidy which is received. The assessee also claimed payment of interest on the loans taken. The further claim of the assessee was towards festival expenses.

The Assessing Officer disallowed the claim of the assessee on account of interest taking into account interest free advances given by the assessee to its sister concern for non-business purposes. Claim for festival expenses was also disallowed. The AO made additions to income in respect of subsidy income on accrual basis on the ground that the assessee was following mercantile system of accountancy. Additions were made to the value of closing stock taking into account the subsidy income on accrual basis.

Questions Nos.(i) & (ii)

As far as these questions are concerned, counsel for both the parties are in agreement that the issues stand settled vide judgment of this Court in assessee's own case dated 4.8.2006 in I.T.A. No.327 of 2004 wherein first question has been answered in favour of the revenue and second question has been answered against the revenue. Accordingly, question No.(i) is answered against the assessee and in favour of the revenue whereas question No.(ii) is answered against the revenue and in favour of the assessee.

Questions Nos.(iii) & (iv)

Both these issues are inter-related concerning the treatment of subsidy received from the Government on sale of fertilisers. The claim of the assessee on account of subsidy was that though the same is claimed when the fertiliser is despatched from the factory to the godown but as per

the scheme, the same is payable to the assessee only on sale thereof and not before that and the assessee has, accordingly, accounted for the subsidy when the sale had taken place. This claim was accepted by the Tribunal. On a perusal of the facts recorded in the orders placed on file, it is clear that right to receive subsidy accrued to the assessee only on sale of the fertiliser not merely on production or dispatch thereof to the godown from the factory. Accordingly, we find that the view taken by the Tribunal is in conformity with law. Counsel for the assessee has also stated that the Tribunal had followed its order passed in assessee's own case for earlier assessment years namely, 1988-89, 1989-90, 1990-91 and 1991-92 and for those assessment years, the revenue had accepted the orders passed by the Tribunal. She has also referred to judgment of Hon'ble the Supreme Court in **Berger Paints India Ltd. Vs. Commissioner of Income Tax, (2004) 266 ITR 99** but we need not to go into this aspect as even on merits we do not find any justification in the plea raised by the revenue.

Similarly, as far as valuation of closing stock is concerned, it is not in dispute that the same method is being followed by the assessee for valuation of closing stock by taking care of the amount of subsidy. Once the estimate for valuation of stock is being followed consistently, the same cannot be disturbed for a single year in between. Even otherwise, the similar issue was considered by the Tribunal in assessee's own case for earlier assessment years, i.e., 1988-89, 1989-90, 1990-91 and 1991-92 where the same was decided in favour of assessee and that order was accepted by the revenue. Accordingly, even on this issue, we do not find any merit in the contentions raised by the counsel for the revenue and do not consider this to be a substantial question of law.

The appeal is disposed of in the manner indicated above.

(ADARSH KUMAR GOEL)
JUDGE

November 7, 2006 **(RAJESH BINDAL)**
renu **JUDGE**